IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12721 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAYAMLAL @ BABULNATH BABAI SAROJ

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12721 of 2003

MR AR SHAIKH for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Surat city on

21.3.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds placed on record and served upon the petitioner reveal that the detaining authority placed reliance on four offences registered against the petitioner on 10.10.2002, 21.10.2002, 3.12.2002 and 1.1.2003 under sec. 379 of IPC. Further, the detaining authority also took into consideration in-camera statements recorded by proposing authority on 21.2.2003 and 22.2.2003 and verified by the detaining authority on 12.3.2003. These statements reveal incidents of 29.12.2003 and 19.1.2003. From the material, the order impugned came to be passed.

Ld. Advocate Ms. Datta for Mr AR Shaikh ld. advocate for the petitioner and Mr. RM Chauhan ld. AGP for the respondents are heard at length

Out of various contentions raised and controverted on behalf of ld. AGP, the matter can be disposed of on the ground of not taking vital facts into consideration by the detaining authority and consequently the order vitiates on the ground of non-application of mind. In the grounds placed on record, the detaining authority has mentioned that in all the four offences registered against the petitioner, he was in judicial custody when the order came to be served upon him. The detaining authority also came to the conclusion that the petitioner was likely to be released on bail at any time and was likely to continue his illegal activity. The facts of this case are covered by a decision of Amrutlal and others vs. Union Government through secretary, Ministry of Finance and others., reported in AIR 2000 SC 3675. In this case, there was no material before the detaining authority to come to the conclusion that the petitioner was likely to be released on bail. The order impugned is required to be quashed on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 21.3.2003 by the Police Commissioner, Surat city, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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